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THE RIGHT OF THE FEDERAL COURTS TO PUNISH OFFENDERS AGAINST THE BALLOT BOX.

I.

The propositions advanced in this article may be broadly laid down as follows :—

The Federal Courts have jurisdiction to punish crimes against the ballot box, at Congressional elections: *Ex parte Siebold* (1879), 100 U. S. 371; *Ex parte Yarbrough* (1883), 110 Id. 653.

This rule obtains, even though the offenders had no intention of falsifying the returns, as to the Congressional vote, and did not interfere with them. The reason of this doctrine is, that the entire vote, both for State officers and for Congressmen, must be considered as an unit; hence, an interference with the returns of the State vote, violates the laws of Congress, and the offenders are criminally liable under the statutes of the United States: *In re Coy* (1888), 127 U. S. 731; *In re Coy* (1887), U. S. Circ. Ct., Dist. Indiana, 31 Fed. Repr. 794.

Over other elections, the Federal Courts have no jurisdiction to punish violators of the election laws, except when there is a discrimination on account of race, color, or previous condition of servitude, within the prohibitions of the Fifteenth Amendment: *U. S. v. Reese, et al.* (1875), 92 U. S. 214.

[Since the decision of the Supreme Court of the United States, in *Fitzgerald v. Green* (March 24, 1890), there is doubt

as to the elections where State officers and Presidential electors, or Presidential electors alone, but no Representatives in Congress, are balloted for : *infra*, page 344.

II.

The first Article of the Constitution of the United States provides—

SECTION 2. The House of Representatives shall be composed of members chosen every second year by the people of the several States, and Electors in each State shall have the qualifications requisite for Electors of the most numerous Branch of the State Legislature.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such vacancies.

[It would be neither necessary nor profitable to quote the opinions of different writers upon the qualifications of the voters or electors for Representatives, as this is a legal and not a political essay and is intended rather to be an exposition of the various decisions of the Federal courts. Still, a reference to a well-known work will be proper, in view of the authority conceded to it by Chief Justice MARSHALL, especially in *Cohens v. Virginia* (1821), 6 Wheat. (19 U. S.) 264, 419.

The definition of the right of suffrage is very justly regarded as a fundamental article of republican government. It was incumbent upon the Convention, therefore, to define and establish this right in the Constitution. To have left it open for the occasional regulation of the Congress, would have been improper, for the reason just mentioned. To have submitted it to the legislative discretion of the States, would have been improper for the same reason ; and for the additional reason, that it would have rendered too dependent on the State governments, that branch of the Federal government which ought to be dependent upon the people alone. To have reduced the different qualifications in the different States, to one uniform rule, would probably have been as dissatisfactory to some of the States, as it would have been difficult to the Convention. The provision made by the convention appears, therefore, to be the best that lay within their option. It must be satisfactory to every State ; because it is conformable to the standard already established, or which may be established by the State itself. It will be safe to the United States ; because, being fixed by the State Constitutions, it is not alterable by the State governments, and it cannot be feared that the people of the States will alter this part of their Constitutions, in such a manner as to abridge the rights secured to them by the Federal Constitution : The Federalist, No. 52.

While this Second section of the First Article of the Constitution adopts the qualifications prescribed by the States for a voter at an election for the popular branch of the State legislature, yet Congress has a supervisory power over the subject, under the provisions of the Fourth section of the same Article of the Constitution (*infra*), in order to secure legal and fair elections, a free and safe exercise of the right to vote thereat, and to prevent fraud and violence thereabout. Congress can make altogether new regulations or add to or alter those already made by the State; impose new duties on the State officers of election and provide for the appointment of other officers; and compel the enforcement of State and Federal laws regulating elections. A regulation made by Congress is of superior authority, and any State law repugnant to it is void as to Congressional elections. Congress has plenary and paramount jurisdiction over these elections: *In re Coy* (1888), 127 U. S. 731.

The provision in relation to vacancies in the Representation from any State is enforced by the Revised Statutes—

SEC. 26. The time for holding elections in any State, District or Territory for a Representative or Delegate to fill a vacancy, whether such vacancy is caused by a failure to elect at the time prescribed by law, or by the death, resignation, or incapacity of a person elected, may be prescribed by the laws of the several States and Territories respectively.

[Under these provisions of the Constitution and the Revised Statutes, the Supreme Court of Rhode Island were of opinion that a vacancy caused by the House unseating a member was one to be filled at an election ordered by the Governor; but if the count of the votes established no election, then under a law of Rhode Island the legislature might order a new election, and the Governor, even if he had power under the Constitution of the United States, might wait for the action of the General Assembly so long as it was in session: *In re Representative Vacancy* (1887), 15 R. I. 621; *In re Congressional Elections* (1887), Id. 624, 627.

[The First article of the Constitution also provides—

SECTION 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six years. * * *

SECTION 4. The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

[Hamilton, in *The Federalist* (Nos. 59, 60, 61) explains this section, together with the objections which were originally raised against it, by proceeding on the broad ground that every government ought to contain in itself, the means of its own preservation. This principle was yielded in the case of the Senate, chiefly because the autonomy of the States would be endangered; moreover the Senate is a body whose members are classified in terms, whilst the Representatives are to be elected every two years. The present arrangement, Hamilton thought preferable in that it would be more convenient and satisfactory in ordinary cases and when no improper views prevail; so that the intention was to have Federal interference upon extraordinary circumstances, when safety demanded.

[Under this section of the Constitution, Congress enacted—

CHAP. XLVII. *An Act for the appointment of Representatives among the several States according to the Sixth Census.* (Approved June 25, 1842, 5 Stat. at Large 491.)

SEC. 2. *And be it further enacted,* That in every case where a State is entitled to more than one Representative, the number to which each State shall be entitled under this apportionment shall be elected by districts composed of contiguous territory, equal in number to the number of Representatives to which said State may be entitled, no one district electing more than one Representative.

[Justice MILLER, in the *Yarborough* case (*supra*) explains the origin and purpose of this section :—

It was not until 1842, that Congress took any action under the power here conferred, when, conceiving that the system of electing all the members of the House of Representatives from a State by a general ticket, as it was called, that is, every elector voting for as many names as the State was entitled to representatives in that House, worked injustice to other States which did not adopt that system, and gave an undue preponderance of power to the political party which had a majority of votes in the States, however small, enacted that each member should be elected by a separate district, composed of contiguous territory: (110 U. S. 660.)

[Thirty years later, the language of the Act of 1842 was slightly changed, but the sense remained the same, and, in the language of the Act of February 2, 1872 (Section 2, 17 Stat.

at Large 28, as amended by the Act of May 30, 1872, Id. 192) now appears in the Revised Statutes of the United States as—

SEC. 23. In each State entitled under this apportionment to more than one Representative, the number to which such State may be entitled in the Forty-third and each subsequent Congress shall be elected by districts composed of contiguous territory, and containing as nearly as practicable an equal number of inhabitants, and equal in number to the number of Representatives to which such State may be entitled in Congress, no one district electing more than one Representative; but in the election of Representatives to the Forty-third Congress in any State to which an increased number of Representatives is given by this appointment, the additional Representative or Representatives, may be elected by the State at large, and the other Representatives by the districts as now prescribed by law, unless the Legislature of the State shall otherwise provide before the time fixed by law for the election of Representatives therein.

[Hamilton discussed the power to pass this statute, in *The Federalist* (Nos. 60 and 61), where he was called upon to meet the objection that the Constitution did not compel the voters to meet in no larger divisions than one county or similar division of the State. The evils of a general ticket were not then apparent.

[Justice MILLER, in the same *Yarbrough* case (*supra*), points out that the election of Representatives in the different States on different days finally appeared to be an evil which Congress remedied by another section of the same Act of February 2, 1872, which is now incorporated into the Revised Statutes as—

SEC. 25. The Tuesday next after the first Monday in November, in the year eighteen hundred and seventy-six, is established as the day, in each of the States and Territories of the United States, for the election of Representatives and Delegates to the Forty-fifth Congress; and the Tuesday next after the first Monday in November, in every second year thereafter, is established as the day for the election, in each of said States and Territories, of Representatives and Delegates to the Congress commencing on the fourth day of March next thereafter.

[Commenting upon the appointment of a time for the election of Representatives, Justice MILLER, in the same case, remarked—

Now the day fixed for electing members of Congress has been established by Congress without regard to the time set for election of State officers, in each State, and but for the fact that the State legislatures have, for their own accommodation, required State elections to be held at the same

time, these elections would be held for Congressmen alone at the time fixed by the act of Congress: 110 U. S. 661.

[These last words receive peculiar force from the Act of March 3, 1875, 18 Stat. at Large 400, in which occurs this concession to convenience :—

SEC. 6. That section twenty-five of the Revised Statutes prescribing the time for holding elections for Representatives to Congress, is hereby modified so as not to apply to any State that has not yet changed its day of election, and whose Constitution must be amended in order to effect a change in the day of election of State officers in said State.

[To prevent *viva voce* voting and to make an uniform system of ballots, an amendatory Act to that of May 31, 1870 (16 Stat. at Large 140, "to enforce the right of citizens of the United States to vote"), provided, as now incorporated in the Revised Statutes—

SEC. 27. All votes for Representatives in Congress must be by written or printed ballot; and all votes received or recorded contrary to this Section shall be of no effect. (Act of February 28, 1871, Sect. 19, 16 Stat. at Large 440.)

[The first article of the Constitution also provides—

SECTION 5. Each House shall be the Judge of the Elections, Returns, and Qualifications of its own Members.

SECTION 8. The Congress shall have power—

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

[The following remarks by WOODRUFF, J. (*U. S. v. Quinn* (1870), U. S. Circ. Ct., S. Dist. N. Y., 8 Blatchf. 48, 64-5), are of interest in the absence of decisions upon the point :—

We do not think it necessary to rest our views of the constitutionality of the law [section 5512, Rev. Stat. U. S.] upon that [fifth] section, and yet the agreement, to our minds, is plausible in a high degree, if indeed, we ought not to regard it as satisfactory considered alone, namely, that when the Constitution confers upon each house the power to judge of the election returns, and qualifications of its own members and then authorizes Congress to make all laws necessary and proper for carrying into execution the foregoing powers, and all other powers vested in any department of the Government, it authorizes Congress to make such laws touching the conduct of elections and returns, as will operate, first, to furnish to each House of Congress appropriate evidence of the validity of the commission, or appointment of any man who comes there, claiming the right to a seat,

and, second, to prohibit the intervention of any obstacle which might embarrass, or prevent, the exercise of the right of each House to judge the election of any man who claims the right to a seat.

[As a result of the great struggle between the North and the South, the Fourteenth Amendment (ratified in 1868 and proclaimed July 28, 1868) provides :—

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States ; nor shall any State deprive any person of life, liberty or property, without due process of law ; nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

And two years later, the Fifteenth Amendment (ratified in 1870 and proclaimed March 30, 1870) added that :—

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

III.

The second Article of the Constitution provides (Section one), in relation to the President and Vice-President of the United States that—

Each State shall appoint, in such manner as the Legislature thereof may direct, a number of Electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress. * *

The Congress may determine the time of choosing the Electors, and the day on which they shall give their votes ; which day shall be the same throughout the United States.

[Under this Section, Congress has exercised its constitutional powers in Chapter one, Title Three, of the Revised Statutes, as amended by Act of February 3, 1887 (24 Stat. at Large, page 373), and Act of October 19, 1888 (25 Stat. at Large, page 613). It is, however, unnecessary to consider these sections in this place, as the recent decision of the Supreme Court of the United States, in *Fitzgerald v. Green*, read March 24, 1890, by Justice GRAY, has declared that electors for President and Vice-President, although appointed by and acting

under the Constitution, are no more officers or agents of the United States than are the members of the State legislatures when acting as electors of Federal Senators, or the people when acting as electors of representatives in Congress: hence the States and the State courts have power to punish fraudulent voting in the choice of their electors. The opinion is too brief to be satisfactory and does not decide as some have imagined, that the State courts have exclusive jurisdiction: this point was not necessary for the decision, as recognition of the jurisdiction of the State courts was sufficient. The case was this: Green had been convicted by the Hustings court of Manchester (Virginia), of voting for Presidential electors while disqualified under the State law; the United States Circuit Court discharged Green on *Habeas Corpus* and this discharge was reversed by the Supreme Court. The case really involved the question of double punishment, as a Representative in Congress was also voted for, and the reversal in this respect operated to affirm the propriety of the criminal suffering as much as the different laws might allow, without deciding the point: (see *infra*, page 364).

It will be observed that nothing in this utterance of the Supreme Court touches upon section 5520 of the Revised Statutes (*infra*, page 363): in fact, the exact position of Presidential electors urgently needs definition.

IV

The doctrine generally held by the courts, is, that the right to vote depends on the laws of the State where this franchise is exercised, and is not granted to a citizen, nor guaranteed by the Constitution of the United States: per BOND, C. J., *U. S. v. Crosby et al.* (1871), U. S. Circ. Ct., Dist. S. C., 1 Hughes 448, 456.

[This was justly denied by Justice MILLER, in the *Yarborough* case, in this language:—

But it is not correct to say that the right to vote for a member of Congress, does not depend on the Constitution of the United States. The office, if it be properly called an office, is created by that Constitution, and by that alone. It also declares how it shall be filled, namely, by election. * * * The States, in prescribing the qualifications of voters for the most numerous branch of their own legislatures do not do this with

reference to the election for members of Congress. Nor can they prescribe the qualification for voters for those [members] *eo nomine*. They define who are to vote for the popular branch of their own legislature, and the Constitution of the United States says the same persons shall vote for members of Congress in that State. It adopts the qualifications thus furnished, as the qualifications of its own electors for members of Congress.

It is not true, therefore, that electors for members of Congress owe their right to vote to the State law in any sense which makes the exercise of the right to depend exclusively on the law of the State: (110 U. S. 663.)

The Fifteenth Amendment has been construed to confer the right to vote upon no one, and merely to invest citizens of the United States with right of exemption from discrimination in the exercise of the elective franchise, on account of race, color, or previous condition of servitude. It is said the right to vote comes from the States, but the right from the prohibited discrimination comes from the Federal Government. But, unless a citizen is otherwise qualified to vote, he cannot avail himself of his franchise. Thus, where a State law provides the qualifications of its voters, and no prohibited discrimination is made, all voters must have those qualifications before they can insist upon their right to cast their ballots; they must be qualified voters before they can have an officer indicted for refusing their ballot: *United States v. Reese* (1875), 92 U. S. 214.

Neither the Constitution, nor the Fourteenth Amendment, made all citizens voters; and a provision in a State Constitution which confines the right of voting to male citizens of the United States is no violation of the Federal Constitution, and an officer refusing the ballot of a woman, violates no law, State or National, because the woman had no right to the elective franchise; the new Amendments do not enlarge the privilege of suffrage so as to entitle anyone to vote: *Minor v. Happersett*, (1874), 21 Wall. (88 U. S.) 162.

[The year previous, one of the concurring Justices in *Minor v. Happersett* (HUNT), sitting in the Circuit Court, for the Northern District of New York, and upon an indictment of Miss Susan B. Anthony, for voting at an election for Representatives in Congress, under section 5511 of the Revised Statutes directed a verdict of guilty, saying—

The right of voting, or the privilege of voting, is a right or privilege arising under the Constitution of the State, and not under the Con-

stitution of the United States. * * If the right belongs to any particular person, it is because such person is entitled to it by the laws of the State where he offers to exercise it, and not because of citizenship of the United States. * * If the Legislature of the State of New York should require a higher qualification in a voter for a Representative in Congress than is required of a voter for a member of the House of Assembly of the State, this would, I conceive, be a violation of a right belonging to a person as a citizen of the United States. That right is in relation to a Federal subject or interest, and is guaranteed by the Federal Constitution : 14 Blatchf. 205.

As already noticed, the Supreme Court of the United States bases the right to vote for Congressmen upon the Federal Constitution, and it has been thought, that if the rules of logic are rigidly applied to the opinion, the distinction is more seeming than real.

[This sentiment has sought support from the distinction drawn by Justice MILLER, in the *Yarbrough* case, where the broad language of WAITE, C. J., in *Minor v. Happersett* (1874), 21 Wall. (88 U.S.) 162, was restrained to its immediate subject matter.

But the Court was combatting the argument that this right [to vote] was conferred on all citizens, and therefore upon women as well as men.

In opposition to that idea, it was said the Constitution adopts as the qualification for voters of members of Congress that which prevails in the State where the voting is to be done ; therefore, said the opinion, the right is not definitely conferred on any person or class of persons by the Constitution alone, because you have to look to the law of the State for the description of the class. But the Court did not intend to say, that when the class or the person is thus ascertained, his right vote for a member of Congress was not fundamentally based upon the Constitution, which created the office of member of Congress, and declared it should be elective, and pointed to the means of ascertaining who should be electors.

The Fifteenth Amendment of the Constitution, by its limitation on the power of the States in the exercise of their right to prescribe the qualifications of voters in their own elections, and by its limitations of the power of the United States over that subject, clearly shows that the right of suffrage was considered to be of supreme importance to the National Government, and was not intended to be left within the exclusive control of the States : *Ex parte Yarbrough* (1883), 110 U. S. 651, 664.

V.

The provisions of the Statutes of the United States which are enforceable by the Federal Courts in trials of offenders against the ballot box, are both general and special, the latter

relating solely to election offenses. Of the general statutes, the following are applicable to the subject.

SECTION 5440. If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, all the parties to such conspiracy shall be liable to a penalty of not more than ten thousand dollars, or to imprisonment for not more than two years, or to both fine and imprisonment in the discretion of the Court. (Act of March 2, 1867, Section 30, 14 Stat. at Large 484, as amended by Act of May 17, 1879, 21 Stat. at Large 4, and now incorporated into the Revised Statutes.)

[Under this Statute, in 1887, Coy was successfully indicted in the Indianapolis ballot box case : 127 U. S. 731 ; 31 Fed. Repr. 794. It is, of course, a general Statute, not simply applicable to election cases, and has had its most extensive application in revenue cases : See the references in Gould and Tucker's notes on the Revised Stat. U. S. pp. 1023-6.

CHAP. CXIV. *An Act to enforce the right of citizens of the United States to vote in the several States of this Union, and for other purposes.* (Approved May 31, 1870, 16 Stat. at Large 139.)

SEC. 6, as incorporated in the Revised Statutes : to wit—

SEC. 5508. If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen, in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same ; or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than five thousand dollars and imprisoned not more than ten years ; and shall, moreover, be thereafter ineligible to any office, or place of honor, profit or trust, created by the Constitution or laws of the United States.

[In the next year, by Act of April 20, 1871, Section second, (17 Stat. at Large 13), and now incorporated in the Revised Statutes as Section 5407, punishment was provided for a conspiracy to defeat the due course of justice in cases such as are forbidden in Section 5508, just quoted.

[This section is constitutional : *Baldwin v. Franks* (1886), 120 U. S. 678, 690, a Chinese case affirming *U. S. v. Waddell* (1884), 112 Id. 76, a homestead entry, affirming *Ex parte Yarbrough* (1883), 110 Id. 651, a case of intimidation of a colored voter ; but it protects only persons who are "citizens," in a political sense, as voters. The interpretation put upon it by

Chief Justice WAITE is as severe as that put by the same Justice upon Sections three and four of the same Act of 1870, in *U. S. v. Reese* (1875), 92 U. S. 214; a construction so severe that the Court was obliged to give an explanation in *Supervisors v. Stanley* (1881), 105 Id. 305, where the question was one of taxation and not of civil rights. Justice MILLER, delivering the opinion in the latter case, said—

This Court, in the two cases cited in the brief, *United States v. Reese* (92 U. S. 214) and *Trade Mark Cases* (100 Id. 82), concedes the general principle that the whole of a statute is not necessarily void because a part of it may be so. * * * The first case also implies that there may be unconstitutional provisions which do not vitiate the whole statute, or even a single section, because the argument is to show that in that case there could be no separation of the good from the bad. It is also to be observed that, in both these cases, it was a statute creating and punishing offences criminally which was to be construed in regard to the limited constitutional power of Congress in criminal matters.

[The last sentence explains the seeming preference of the rich tax payer over the poor voter.

[Returning to *Baldwin v. Franks*, the substance of the decision is contained in the words of Chief Justice WAITE.—

This section is highly penal in its character, much more so than any others, for it not only provides as a punishment for the offence, a fine of not more than five thousand dollars and an imprisonment of not more than ten years, but it declares that any person convicted; shall "be thereafter ineligible to any office, or place of honor, profit, or trust created by the Constitution or laws of the United States." It is, therefore, to be construed strictly; not so strictly as to defeat the legislative will, but doubtful words are not to be extended beyond their natural meaning in the connection in which they are used. Here the doubtful word is "citizen," and it is used in connection with the rights and privileges pertaining to a man as a citizen, and not as a person only, or an inhabitant. And, besides, the crime has been classified in the revision [*i. e.*, the arrangement of the Revised Statutes of the United States,] among those which relate to the elective franchise and the civil rights of citizens. For these reasons we are satisfied that the word "citizen," as used in this statute, must be given the same meaning it has in the Fourteenth Amendment of the Constitution, and that, to constitute the offence which is there provided for, the wrong must be done to one who is a citizen in that sense * * * It may be that by this construction of the statute, some are excluded from the protection it affords, who are as much entitled to it as those who are included; but this is a defect, if it exists, which can be cured by Congress, but not by the Courts: (120 U. S. 691).

[These last words seem to have allusion to the vigorous dissent in that case, by Justices HARLAN and FIELD.

Other statutes and authorities on intimidating the voter appear later: (see page 360).

VI.

[The statutes especially relating to the suffrage may be divided into two classes; those relating to Federal elections, and those protecting the exercise of the suffrage generally.

Among the former are Section Nineteen of the Act of 1870 (whose title has already been quoted) which is now incorporated in the Revised Statutes as follows:—

SEC. 5511. If, at any election for Representative or Delegate in Congress, any person knowingly personates and votes, or attempts to vote, in the name of any other person, whether living or dead, or fictitious; or votes more than once at the same election for any candidate for the same office; or votes at a place where he may not be lawfully entitled to vote; or votes without having a lawful right to vote; or does any unlawful act to secure an opportunity to vote for himself, or any other person; or by force, threat, intimidation, bribery, reward, or offer thereof, unlawfully prevents any qualified voter of any State, or of any Territory, from freely exercising the right of suffrage, or by such means induces any voter to refuse to exercise such right, or compels or induces, by any such means, any officer of an election in any such State or Territory, to receive a vote from a person not legally qualified or entitled to vote; or interferes in any manner with any officer of such election in the discharge of his duties; or by any such means, or other unlawful means, induces any officer of any election, or officer whose duty it is to ascertain, announce or declare the result of any such election, or give or make any certificate, document or evidence in relation thereto, to violate or refuse to comply with his duty or any law regulating the same; or knowingly receives the vote of any person not entitled to vote, or refuses to receive the vote of any person entitled to vote, or aids, counsels, procures, or advises any such voter, person or officer to do any act hereby made a crime, or omit to do any duty, the omission of which is hereby made a crime, or attempt to do so, he shall be punished by a fine of not more than five hundred dollars, or by imprisonment not more than three years, or by both, and shall pay the costs of prosecution.

[The phrase "officers of any election," is examined later on page 360.

[In the Coy case, (*supra*), the offence was a conspiracy to induce the election officers to refuse to comply with their duty in safe-keeping the election returns, and an effort was made to secure a ruling to the effect that the evil intent, though directed against the State as well as the Congressional returns, which were all on one sheet, must nevertheless be shown to have

been specifically directed against the Congressional vote. This was denied, after the analogy of the killing of one person for another, and of the laws relating to gunpowder and similar dangerous substances. MILLER, J., writing the opinion of the Court, added—

The object to be attained by these Acts of Congress is to guard against the danger, and the opportunity, of tampering with the election returns, as well as against direct and intentional frauds upon the vote for the members of that body. The law is violated whenever the evidences concerning the votes cast for that purpose are exposed, or subjected in the hands of improper persons, or unauthorized individuals to the opportunity for their falsification, or to the danger of such changes or forgeries as may affect that election, whether they actually do so or not, and whether the purpose of the party guilty of thus wresting them from their proper custody and exposing them to such danger, might accomplish this result. *In re Coy* (1887), 127 U. S. 731, 754.

[Consequently the ruling of GRESHAM, J., in another case, would seem to be too strict, unless there were different tally sheets, poll books, ballot boxes and returns, for State and Congressional elections, and no effort to vote for Congressman as in *U. S. v. Seaman* (1885), U. S. Circ. Ct., S. Dist. N. Y., 23 Fed. Repr. 882. The ruling of GRESHAM was as follows—

The mere fact that a representative in Congress is voted for at an election of State and County officers, does not authorize Congress to regulate such elections in matters which in no wise relate to or affect the result so far as it concerns the United States. It has no more right to regulate the election of State and County officers, under these circumstances, than it would have if no representative in Congress were voted for; and it has not attempted to do so.

The jurisdiction of the Federal Courts, in the enforcement of these statutes, depends altogether upon something having been done, or omitted, which has affected, or might affect, the result of an election for a representative in Congress. The facts stated in the affidavit, in connection with the admissions of counsel in the course of argument, show that the result of the election was not affected, unless it was by the mutilation of the tally papers solely and exclusively in the statements of the vote for coroner and criminal judge. It is not pretended that the tally papers were mutilated, changed, or forged in any other respect, or that any of the tally papers, poll books, or ballots, were removed from their proper place of custody. The alleged offense against the United States consists wholly in the alteration of the statements of the votes for coroner and criminal judge, as contained in the tally papers: *Ex parte Perkins* (1887), U. S. Circ. Ct., Dist. Indiana, 29 Fed. Repr. 900.

[Perkins had been committed for refusing to be sworn be-

fore an United States Commissioner, in a proceeding against others based on the affidavit mentioned by Judge GRESHAM. Perkins was therefore discharged, but afterwards was indicted and convicted with others, for obtaining possession of the tally paper, poll list and certificate, contrary to Section 5511, *supra*. One of the co-defendants, Coy, petitioned for a *habeas corpus*, but was denied by Justice HARLAN, sitting in the Circuit Court with GRESHAM, July 16, 1887 (31 Fed. Repr. 794), and afterwards was again denied by the Supreme Court of the United States, May 14, 1888 (127 U. S. 731). These separate decisions were obtained by complaining of different indictments. The ruling of District Judge WOODS, which was reversed in this Perkins case by Circuit Judge GRESHAM, was thus found to be correct: it was founded on a prior case where the District Judge BLODGETT had similarly charged the jury: See 31 Fed. Repr. 912, for the extracts from this charge. This ruling of GRESHAM agreed with that of TRENT, Dist. J., in *U. S. v. Cahill* (1881), U. S. Circ. Ct., E. Dist. Mo., 9 Fed. Repr. 80.

[In December, 1886 (*U. S. v. McBosley*, U. S. Dist. Ct., Dist. Indiana, 29 Fed. Repr. 897), Judge WOODS was moved to quash a number of indictments founded upon Section 5511, *supra*, because the indictments failed to aver any unlawful ballot or any bribery in relating to a congressional election. In denying the motion the judge said—

When congressional and local elections are held at the same times, and places, and mixed ballots are cast, as is the practice in Indiana, it is a misleading refinement, I think, to say that there are two elections—a National and a State—held at the same time. It is one election, for the conduct of which the two sovereignties have a common concern, though interested in several results (*Ex parte Siebold*, [1879] 100 U. S. 371); and Congress having unquestionably the paramount, and, when it sees fit to assert it, the exclusive power to regulate such elections, must, in the first instance at least, determine for itself what regulations are necessary or expedient; and it is not the province of the courts to restrict or annul any enactment on the subject, unless it be demonstrable that, in no event, and under no circumstances, the offense defined, and coming within the letter and spirit of the enactment, could affect the election for representative in Congress.

[What would be an unlawful prevention under this section came up for decision in *U. S. v. Souders* (1871), U. S. Dist. Ct.,

Dist. N. J., 2 Abb. 456, where a company of white men, including the defendant, attacked a number of colored voters, waiting at the place of election, to deposit their ballots for a representative in Congress. This outrage occurred in Camden, N. J., on the eighth of November, 1870. The defense set up (unsuccessfully) the fact that the voters afterwards did deposit their ballots and hence there had been a violation of section 5506 of the Revised Statutes relating to intimidation, (section 14 of the Act of 1870) and not this section. The Court (NIXON, J.) followed the principles explained *infra*, page 372, and after giving a brief history of the Act of 1870, concluded that the manifest object of section 5506 was to enforce the provisions of the Fifteenth Amendment, and of section 5511 to conserve the freedom and purity of elections for representatives in Congress. As to the fact that the voters did actually cast their ballots at a later hour, and the contention that they therefore were not actually intimidated, the Court said—

It seems to me, as I have already intimated, that such a construction of the statute is too narrow, and that it defeats the purpose which Congress had in view in enacting it. This purpose was to protect men in the discharge of their most sacred political privilege. That would be a slight protection, indeed, which allows bullies and rowdies to surround the ballot box from the opening to the close of the polls, keeping off all legal voters by threats, intimidation, or force; and then to hold the offense is not committed, if by chance the hindered voters should avail themselves of a casual opportunity, to slip in their ballots when the backs of these vigilant sentinels are turned: (page 467.)

[The prohibition against bribery has the same general object as that against intimidation: both are designed to prevent any interference with the free exercise of the right of suffrage. Hence, it is immaterial that the bribe was not in relation to the ballot for Representative; and no such averment is necessary in the indictment: because the theory of the law, in agreement with experience, holds a voter, bribed for one purpose, to be unfitted for the right use of the ballot for every purpose: *U. S. v. McBosley* (1886), U. S. Dist. Ct., Dist. Indiana, 29 Fed. Repr. 897, 899.

[Unlawful voting is not merely forbidden and punished by section 5511, but an important matter of detail was added in

- the same Act of 1870 by Section Twenty-one, now incorporated with the Revised Statutes as—

SECTION 5514. Whenever the laws of any State or Territory require that the name of a candidate or person, to be voted for as Representative or Delegate in Congress, shall be printed, written, or contained, on any ticket or ballot, with the names of other candidates or persons to be voted for at the same election, as State, territorial, municipal, or local officers, it shall be deemed sufficient *prima facie* evidence to convict any person charged with voting or offering to vote, unlawfully, under the provisions of this chapter, to prove that the person so charged, cast or offered to cast such a ticket or ballot whereon the name of such Representative or Delegate might by law be printed, written or contained, or that the person SO charged, committed any of the offenses denounced in this chapter with reference to such ticket or ballot.

[The word SO is here printed in capitals to catch the eye, as the word has no place in the section, according to the ruling of Justice BREWER, while Circuit Judge, in *U. S. v. Morrissey* (1887), U. S. Circ. Ct., E. Dist. Mo., 32 Fed. Repr. 147. Morrissey was judge of an election where representatives in Congress were voted for as well as State and county officers and was convicted of receiving ballots from persons known to him not to be entitled to vote. He moved in arrest of judgment, that this Section was intended to apply only to the party voting or offering to vote. This was denied, the Court saying—

It is a familiar rule that, that which is within the letter of a statute, and not within its spirit, is not within the statute; and also that, that which is within the spirit, though not within the letter, may sometimes be declared to be within the statute, even in Criminal cases. Reading that [section] as it is expressed, "so charged," it makes that clause superfluous, meaningless, and worse than that, because a person "so charged," could not be convicted of any offense but that of which he is charged, and could not be convicted of any of the offenses named in this chapter. Obviously, that was not the intent of Congress.

Through carelessness in the drafting or compilation of this section, that word "so" was interpolated improperly, and the only fair construction of that section is to treat it as though that word was not there. So read, it gives force and validity to this clause which otherwise it would not have. So read, it gives meaning to the whole section, and carries out the obvious intent of Congress, that, where there is a single ballot at any election at which, under the law of the State, all names must appear on the same ballot, the production of the ballot is *prima facie* evidence, sufficient to convict, etc., in the trial of any of the offenses named in this chapter. I think that objection, therefore, is not well taken.

[The carelessness spoken of will appear by a comparison.

In place of words printed in italics in section 5514, the Act of 1870 used other words, also printed below in italics and added a clause, after the italics, which the Revised Statutes omit, the original reading,—

SECTION 21. *And be it further enacted*, that whenever, by the laws of any State or Territory, the name of any candidate or person to be voted for as representative or delegate in Congress, shall be required to be printed, written, or contained in any ticket or ballot with other candidates or persons to be voted for at the same election for State, territorial, municipal or local officers, it shall be sufficient *prima facie* evidence, *either for the purpose of indicting or convicting any person charged with voting, or attempting or offering to vote unlawfully, under the provisions of the preceding sections, or for committing either of the offenses thereby created to prove that the person so charged or indicted, voted or attempted or offered to vote such ballot or ticket, or committed either of the offenses named in the preceding sections of this Act, with reference to such ballot.* And the proof and establishment of such facts shall be taken, held and deemed to be presumptive evidence that such person voted, or attempted or offered to vote, for such representative or delegate, as the case may be, or that such offense, was committed with reference to the election of such representative or delegate, and shall be sufficient to warrant his conviction, unless it shall be shown, that such ballot, when cast, or attempted or offered to be cast by him, did not contain the name of any candidate for the office of representative or delegate in the Congress of the United States, or that such offense was not committed with reference to the election of such representative or delegate: (16 Stat. at Large 145.)

[The omission of the last words, printed in "roman," now appears to have been discreet, since the Federal Courts afterwards decided to punish for all offenses against the ballot box, at an election where a Representative or Delegate in Congress is voted for: (*supra*, page 350). But, in other respects, the section, both originally and as incorporated, is merely a rule of evidence. Hence, Morrissey finally escaped on account of the absence from his indictments, of the words necessary to charge him with an act affecting the election of Congressmen. The Court expressly followed the cases of *U. S. v. Cahill* (1881), U. S. Circ. Ct., E. Dist. Mo., 9 Fed. Repr. 80, and *U. S. v. Seaman* (1885), U. S. Circ. Ct., S. Dist. N. Y., 23 Id. 882. All these cases preceded the Coy cases and the ground is now clear for a final decision that an indictment would be sufficient if it averred certain forbidden acts at an election where Representatives in Congress were to be balloted for: (*supra*, pages 350, 351).

[While indeed this section 5514 does relate to evidence, the effect of such a regulation of the proof is to dispense with the averment in the indictment, that the ballot cast contained the name of a candidate for Representative in Congress : *U. S. v. McBosley* (1886), U. S. Dist. Ct., Dist. Indiana, 29 Fed. Repr. 897.

Section Twenty of this Act of 1870 was amended the following year (Act of February 28, 1871, 16 Stat. at Large 433), by inserting the italicized words, so as to read (in the Revised Statutes)—

SEC. 5512. That if, at any registration of voters for an election for representative or delegate in the Congress of the United States, any person knowingly personates and registers, or attempts to register, in the name of any other person, whether living, dead, or fictitious, or fraudulently registers, or fraudulently attempts to register, not having a lawful right so to do ; or does any unlawful act to secure registration for himself or any other person ; or by force, threat, menace, intimidation, bribery, reward, or offer, or promise thereof, or other unlawful means, prevents or hinders any person having a lawful right to register, from duly exercising such right ; or compels or induces, by any of such means, or other unlawful means, any officer of registration to admit to registration any person not legally entitled thereto, or interferes in any manner with any officer of registration in the discharge of his duties, or by any such means, or other unlawful means, induces any officer of registration to violate or refuse to comply with his duty, or any law regulating the same ; *or if any such officer knowingly and wilfully registers as a voter any person not entitled to be registered, or refuses so to register any person entitled to be registered ; or if any such officer or other person who has any duty to perform in relation to such registration or election, in ascertaining, announcing, or declaring the result thereof, or in giving or making any certificate, document, or evidence in relation thereto, knowingly neglects or refuses to perform any duty required by law, or violates any duty imposed by law, or does any act unauthorized by law, relating to or affecting such registration, or election, or the result thereof, or any certificate, document, or evidence in relation thereto, or if any person aids, counsels, procures, or advises any such voter, person, or officer, to do any act hereby made a crime or to omit any act, the omission of which is hereby made a crime, every such person shall be punishable as prescribed in the preceding Section. [i. e. Section 5511.]*

[The words in *italics* took the place of the words “ or knowingly and wilfully receive the vote of any person not entitled to vote, or refuse to receive the vote of any person entitled to vote,” in the original act.

[This section depends upon the power of Congress to de-

clare that a fraudulent registration, or a fraudulent attempt to register, for the purpose of voting for a Representative or Delegate in Congress, is a crime against the United States. It does not involve the power to ordain a National registration law, for it does not operate until the State has imposed registration.

[Entertaining no doubt of this power, the Court overruled the demurrer to the indictment and the defendant was sentenced to two years imprisonment: *U. S. v. Quinn* (1870), U. S. Circ. Ct., S. Dist. N. Y., 8 Blatchf. 48, *Coram*, WOODRUFF and BLATCHFORD, JJ.

[This ruling of the Court was made with the statute of 1870 before it, and the section construed had a proviso appended which is now incorporated in the Revised Statutes, as—

SEC. 5513. Every registration made under the laws of any State or Territory, for any State or other election at which such Representative or Delegate in Congress may be chosen, shall be deemed to be a registration within the meaning of the preceding Section, notwithstanding such registration is also made for the purpose of any State, Territorial, or municipal election.

Under section 5512, the neglect or refusal of an election officer to perform a duty required by law, in regard to an election, at which a Representative of Congress is voted for, is made an offence against the United States, although such non-performance of duty is without any evil intent; while the doing of an act simply unauthorized by law is not punishable, unless done with an intent to affect the election or the result thereof. Whether such a distinction is justified by sound public policy was for the law-making department of the government to determine, and not for the courts: *In re Coy* (1887), U. S. Circ. Ct., Dist. Indiana, 31 Fed. Repr. 794, 797, per HARLAN, J., who also said—

Observe, "intent" is not made an element in determining the existence of the offences specified in that section, except in those cases where the offender knowingly does an act "unauthorized" by the law of the United States, or by the law of the State or Territory under whose sanction he exercises the functions of an officer of election.

[And the learned Justice proceeded to quote with approval from the decision of the United States District Judge (HAMMOND) overruling a demurrer to an indictment under this Sec-

tion, in *U. S. v. Jackson* (1885), U. S. Circ. Ct., W. Dist. Tenn., 25 Fed. Repr. 548, interposed on the ground that no specific intent to violate the law had been charged.

[In this Tennessee case, in addition to that of want of charge of specific intent, the demurrer also set up the want of any penalty in the State laws. This was also held to be no ground for demurrer, the learned Judge saying—

It is the plain purpose of this statute to declare as an offense against the United States, *proprio vigore*, the neglect, refusal, or violation of any duty imposed upon an officer holding an election for representative in Congress, by any law, State or Federal. It is not necessary, as counsel argue, that the State law imposing the duty shall attach a penalty for its violation, in order to make it an offense under this statute. The only object for which we look to the State law, is to find the measure of the officer's duty, as one charged with the function of holding the election. Once given a duty to perform in that regard, and its performance is an obligation imposed by this Federal statute. Its non-performance subjects the officer to the penalties here imposed. It is wholly immaterial how the Statute laws may look upon, or treat, a violation of his duty; for when the duty is assumed by him, he comes immediately within the jurisdiction of the Federal law, and must obey it, or take the consequences here by this statute itself imposed for any neglect, refusal, or violation of that duty: 25 Fed. Repr. 549.

[Section Twenty-two of the Act of 1870 was incorporated into the Revised Statutes, the last word being changed from "ten" to "eleven" by the Act of February 18, 1875 (18 Stat. at Large 316, 320): to wit—

SEC. 5515. Every officer of an election at which any Representative, or Delegate, in Congress is voted for, whether such officer of election be appointed, or created, by or under any law or authority of the United States, or by or under any State, territorial, district, or municipal law or authority, who neglects or refuses to perform any duty in regard to such election, required of him by any law of the United States, or of any State or Territory thereof; or who violates any duty so imposed; or who knowingly does any acts thereby unauthorized, with intent to affect any such election, or the result thereof; or who fraudulently makes any false certificate of the result of such election in regard to such Representative or Delegate; or who withholds, conceals, or destroys any certificate of record so required by law respecting the election of any such Representative or Delegate; or who neglects or refuses to make and return such certificate as required by law; or who aids, counsels, procures, or advises any voter, person or officer to do any act by this or any of the preceding sections made a crime, or to omit to do any duty, the omission of which is by this, or any of such sections, made a crime, or attempts so to do, shall be punished as prescribed in section fifty-five hundred and eleven. [*Supra.*]

[This section is constitutional: *U. S. v. Gale* (1883), 109 U. S. 65, 66, following the *Siebold* and *Clarke* cases (1879), 100 Id. 371, 399.

[As the question of intention is not an element under section 5512, except when the officer of election knowingly does an unauthorized act; so under section 5515, there are two offenses; the one arising from neglect or refusal, and the other from intention to affect the result of the election: *U. S. v. Baldridge* (1882), U. S. Circ. Ct., N. Dist. Ala., 11 Fed. Repr. 552. In this case the election officers were charged with making a false certificate of the result of the election, the evidence showing the certificate was false because the ballot box had been tampered with by other persons after the close of the election and before the ballots in the box had been counted.

Leaving the ballot box so that it could be tampered with, was held to be sufficient evidence that the certificate was fraudulently false, BRUCE, District Judge, charging the jury that—

When the officer of election has the means and ability to prevent mischief and fraud, he must do so; and if, through his carelessness and indifference, the fraud is perpetrated, his negligent conduct, under such circumstances, becomes culpable and is what the law calls criminal negligence: Id. 556.

[The same ruling was made in *U. S. v. Jackson* (1885), U. S. Circ. Ct., W. Dist. Tenn., 25 Fed. Repr. 548; both cases proceeding upon the common ground that the specific intent applies only to the clause in which it is found, and not to the preceding or following clauses.

[It is true that the jury in *U. S. v. Foster* (1881), U. S. Circ. Ct., E. Dist. Va., 6 Fed. 247, were instructed that the rejection of ballots offered by those entitled to vote, was only a technical violation of section 5515, and that they should be satisfied of some wrongful purpose, motive or intention, in such rejection. This case is, therefore, opposed to the distinction drawn above; it does not carry much weight with it, as it regards the officer rather than the act.

[Hence a clerk of the election, whose duty it is to attest the signatures of the judges, and who is not required to know whether the certificate is correct, cannot be indicted for merely

attesting : *U. S. v. Green* (1887), U. S. Circ. Ct., E. Dist. Mo., 33 Fed. Repr. 619; and a joint indictment with the judges of the election is bad : *U. S. v. Davis*, Id. 621.

[An illustration of an intentional crime under this section appears in *U. S. v. Bader* (1882), U. S. Circ. Ct., E. Dist. La., 4 Woods 189, where the election officers demurred to an indictment charging them with adding names to the registry, without authority of law and with intent to affect an election at which a Representative in Congress would be voted for. The demurrer was overruled. Of course the allegation must be proved : *U. S. v. Wright* (1883), U. S. Circ. Ct., E. Dist. La., 16 Fed. Repr. 112.

[Again, in *Matter of Spooner* (1880), U. S. Circ. Ct., S. Dist. N. Y., 9 Abbott's New Ca. 481, the Court, composed of BLATCHFORD and CHOATE, were unanimous in the opinion that a deputy marshal or chief supervisor would be liable for purposely omitting until election day the service of a warrant for illegal registration, the former Judge saying—

We both agree that where a man can be arrested before election day as well as not, he ought to be so arrested. If there is any delay in arresting him where he could have been arrested before that day, it must be presumed to be for the purpose of preventing him from voting, and consequently unlawful : Id. 483.

In *U. S. v. Caruthers* (1882), U. S. Circ. Ct., N. Dist. Miss., 15 Fed. Repr. 309, there was a motion to quash an indictment charging the appointment of an inspector who could not read and write, with the intention of affecting an election where a Representative in Congress was voted for. The motion was refused, HILL, J., saying—

The [State election] statute provides, and properly so, that, in any event, competent and suitable persons shall be appointed to discharge these important trusts, if such persons can be procured, and the presumption is that every County and election district does contain a sufficient number of such competent and suitable persons to perform these duties, and that, if appointed, they will serve. If any county or district should be so unfortunate as not to contain such persons they ought to be abolished and added to such as do contain them. It is an impossibility for a person, who can neither read nor write, to properly discharge the duties of an inspector of such elections ; it is their duty to determine what votes are proper to be received and counted, and those properly to be rejected ; to ascertain the whole number cast for each candidate and to make and sign the proper returns.

[It was under this section 5515, that the Governor of Arkansas was indicted for issuing a fraudulent certificate of election. Without entering into the merits at all, the United States District Court (composed of DILLON and Caldwell, JJ.) sustained a demurrer, on the ground that the Governor of a State was not an officer of election: *U. S. v. Clayton* (1871), 2 Dillon 219; S. C. 10 AMERICAN LAW REGISTER 737. This citation in the margin of the Revised Statutes is incorrectly given "19 Amer. L. Rep. 737," being both a misprint and a disregard of the numbering of the New Series. The decision itself proceeded upon two grounds; the popular use of the words "officers of election", and the danger of disturbing the political harmony of the Union upon a mere construction of a statute. The authorities followed are collated (*infra*, page 372).

[The definition of an "officer of an election" was also entered upon in *U. S. v. Fisher* (1881), U. S. Circ. Ct., S. Dist. Ohio, 8 Fed. Repr. 414, where a supervisor, appointed under the laws of the United States, was indicted for stuffing the ballot box, and demurred on the ground that he was not an "officer of election." The demurrer was overruled, after an examination into the duty of a supervisor.

VII.

[In addition to the general crime of intimidating a citizen (*ante*, page 347) there are two classes of statutes relating especially to the ballot. One of these relates to violation of rights secured in every State and Territory to every voter, by the Fifteenth Amendment. Want of space forbids examination into this class of intimidations, and requires that attention should be given solely to the other class of statutes relating to voters for electors for President or Vice-President, or for Representatives in Congress.

[In 1883 Munford and others demurred to an information in the United States Circuit Court for the Eastern District of Virginia, charging them with conspiracy to prevent, as well as actually delaying the assessment of certain voters as required to be done to qualify them to vote. The authority for such information was in the Revised Statutes—

SEC. 5506. Every person who, by any unlawful means, hinders, delays,

prevents or obstructs, or combines and confederates with others to hinder, delay, prevent, or obstruct any citizen from doing any act required to be done to qualify him to vote, or from voting at any election in any State, territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be fined not less than five hundred dollars, or be imprisoned not less than one month nor more than one year, or be punished by both such fine and imprisonment.

[The margin of the Revised Statutes indicates that this Section was derived from Section four of the Act of 1870; it also refers to the cases of *U. S. v. Reese* (1875), 92 U. S. 214, and *U. S. v. Cruikshank* (1875), Id. 542, where Section four was pronounced unconstitutional. Of course, the counsel for Munford raised the constitutional question; the Court, composed of Judges BOND and HUGHES, denied the application of these decisions, pointing out that they were rendered in civil rights cases and not at or connected with congressional elections, and under Section four of the Act of 1870, which was connected with the preceding sections by the words "as aforesaid." - This latter point was especially dwelt upon by both the judges:—

The information in this case is founded upon Section 5506 of the Revised Statutes of the United States. I will remark that that Section is not the same law as Section four of the Enforcement Act of May 31, 1870. It is nearly the same in terms, but it contains no words connecting it with other sections of any act, as Section four did. It stands upon its own terms and language. It was not enacted in the same bill as Section four of the Act of 1870, or at the same time, or by the same Congress. It was enacted in 1874, and took effect as a law on the first of December, 1874, two months after the case of *U. S. v. Reese* was argued before the Supreme Court of the United States, and more than two years after the indictment was found, which was passed upon in that case. The Supreme Court did not in the case of *Reese*, and has not in any subsequent case, passed upon Section 5506 of the Revised Statutes; and, whatever it may have ruled in any of its decisions upon any other statute, such as Section four of the Enforcement Act of 1870, *non constat* that it has thereby ruled upon Section 5506, upon which the information before us is founded.

We are dealing here with an offense charged to have been committed at a Federal election, in violation of this Section 5506; and the defense ask us to base our ruling, in this case of a Federal election, upon the ruling of the Supreme Court in a case arising in a town election, under the Act of 1870, in which that Court not only carefully confined itself to the case before it, but protested by iteration, that it was not considering any law in its relation to Federal elections: HUGHES, J., *U. S. v. Munford* (1883), U. S. Circ. Ct., E. Dist. Va., 16 Fed. Repr. 223, 229.

[Munford had still further trouble, as he was sued for refusing to assess one Brown, who wished to qualify himself to vote for Congressmen. The declaration contained the necessary averments, to bring the case within the Revised Statutes—

SEC. 2005. When, under the authority of the constitution or laws of any State, or the laws of any Territory, any act is required to be done as a prerequisite or qualification for voting, and by such constitution or laws, persons or officers are charged with the duty of furnishing to citizens an opportunity to perform such prerequisite, or to become qualified to vote, every such person and officer shall give to all citizens of the United States, the same and equal opportunity to perform such prerequisite, and to become qualified to vote.

SEC. 2006. Every person or officer, charged with the duty specified in the preceding Section, who refuses or knowingly omits to give full effect to that section, shall forfeit the sum of five hundred dollars to the party aggrieved by such refusal or omission, to be recovered by an action on the case, with costs, and such allowance for counsel fees as the court may deem just.

[A demurrer to this declaration was overruled upon the principles already decided in the criminal case (*U. S. v. Munford*), Judge HUGHES adding—

We hold that Section 2005 was passed by Congress subsequently to the Act of May, 1870, as part of the laws of the Revised Statutes relating to the *elective franchise*; that it was passed in virtue of the general powers of Congress over Federal elections; that it is not, necessarily, to be construed in connection with the preamble and context of the Act of May, 1870; that it was enacted independently of such context, as it now stands in the Revised Statutes, on the twentieth of June, 1874; that Congress must be held to have applied it to Federal elections whether express language was used to that effect or not; that it does not in its present form and *status* apply to State elections, because, in respect to them, the section, in order to be valid under the Fifteenth Amendment, which gives only limited powers of legislation over State elections, must contain apt words bringing it within the province of the amendment, which words are wanting; that the fact that the section is not warranted by the Fifteenth Amendment does not render it null if it is authorized by Article one of the Constitution; and that if the discrimination complained of in this suit resulted, as alleged, in depriving the plaintiff of the privilege of voting equally with all others entitled to vote in a Federal election, the declaration is good.

VIII.

[The scope of this article forbids an examination into the laws regulating the holding of an election and it will merely be necessary to refer to the Sections of the Revised Statutes

(Title XXVI), relating to the appointment of supervisors, and special deputy marshals, and for holding sessions of the United States Circuit Courts. The subject will be separately considered hereafter.

CHAP. XXII. *An Act to enforce the Provisions of the Fourteenth Amendment to the Constitution of the United States; and for other Purposes.* (Approved April 20, 1871, 17 Stat. at Large 13.)

SEC. 2, in part, as incorporated in the Revised Statutes: to wit—

SEC. 5520. If two or more persons, in any State or Territory, conspire to prevent, by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support, or advocacy, in a legal manner, toward or in favor of any lawfully qualified person as an elector for President or Vice-President, or as a member of the Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; each of such persons shall be punished by a fine of not less than five hundred, nor more than five thousand dollars, or by imprisonment, with or without hard labor, not less than six months nor more than six years, or by both such fine and imprisonment.

[The constitutionality of this Section was affirmed in *U. S. v. Goldman* (1878), (U. S. Circ. Ct., Dist. La.) 3 Woods 187, the Circuit Judge Woods, distinguishing the ruling in *Minor v. Happersett* (1874), 21 Wall. (88 U. S.) 178, that the Constitution of the United States conferred the right of suffrage upon no one, in a manner different from that adopted in the *Yarbrough* case by the Supreme Court: (*ante*, page 347).

But this language refers solely to voters at an election for State officers, and so far as such elections are concerned, the United States has no voters of its own.

Now, the question is, has an elector who is qualified by State law to vote for the most numerous branch of the State Legislature, a right conferred upon him by this clause of the Constitution to vote for members of Congress? * * * It seems to be clear that the language of the Section under consideration could not have been intended merely to give a basis of representation; that was provided for by other clauses of the Constitution. If this be so, it must follow that it was intended as a declaration as to who of the people of the States, should have the right to vote for representatives in Congress. As, therefore, the elector qualified by State laws, derives his right to vote for members of Congress from the Constitution of the United States, Congress has the power to protect him in that right.

An election is not simply the depositing of a ballot in a box. If the elector is forced to vote a certain ballot against his will, it is not an election so far as he is concerned, and equally so if he is prevented by violence from voting at all. An election is the expression of the free and untrammelled choice of the electors. There must be a choice, and the ex-

pression of it, to constitute an election. Under our American Constitution, an election implies a free interchange and comparison of views on the part of the people who are voters, and finally an independent expression of choice. Any interference with the right of the elector, to make up his mind how he shall vote, is as much an interference with his right to vote as if he were prevented from depositing his ballot in the ballot box after he had made up his mind: Woods, J., Id. 196, 197.

[These sentiments are much the same as those of Judge NIXON in the Camden intimidation case (*ante* page 352), and are solidly based upon the principles of interpreting election laws mentioned at the close of this article.

[The subject of electors for President and Vice-President has already been treated: (*ante*, page 343).

IX.

The United States government has not provided separate elections for Congressmen, nor has it interfered with the general laws for the conduct of those elections passed by the State, but has enacted suitable laws for the punishment of persons who violate laws at an election where votes are cast for members of Congress. In doing this, the laws of the State have been adopted, and provisions have been made for the punishment of crimes against the ballot box, in the Federal Courts. The power of Congress, under the Constitution of the United States, to make such provisions as are necessary to secure the fair and honest conduct of an election at which a member of Congress is elected, as well as the preservation, proper return, and counting of the votes cast thereat, and whatever is necessary to an honest and fair certification of such election, cannot now be questioned: *In re Coy* (1888), 127 U. S. 731. The State laws which Congress sees no occasion to alter, but which it allows to stand, are, in effect, adopted by Congress. The duties devolved on the officers of elections, are duties which they owe to the United States as well as to the State: *Ex parte Siebold* (1879), 100 U. S. 371, 388.

An objection sometimes made to this doctrine, that the Federal Courts can enforce the State laws as laws of the United States, is, that if Congress can impose penalties for violation of State laws, the officer will be made liable to double punishment for delinquency, both at the suit at the State, and at the suit of the United States.

To this argument it may be said, that each government punishes for violation of duty to itself only. Where a person owes a duty to two sovereigns, he is amenable to both for its performance, and either may call him to account: BRADLEY, J., *Ex parte Siebold* (1879), 100 U. S. 371, 389. [In this latter case, the learned Justice reviews the cases already decided; that is, the counterfeiter's case of *Fox v. The State of Ohio* (1847), 5 How. (46 U. S.) 410, where State laws against circulating counterfeit coin were held not to be repugnant to the Federal laws against counterfeiting, Justice McLEAN dissenting, among reasons, on account of the possible double punishment; it seems (page 440 of the report), that Justice STORY (who had died September 10, 1845) held the same opinion. At the time of the decision, the Court was composed of TANEY, C. J., and McLEAN, WAYNE, CATRON, DANIEL, NELSON, GRIER and WOODBURY, JJ. Three years later, the same judges went a step further, Justice DANIEL saying for the Court—

With the view of avoiding conflict between the State and Federal jurisdictions, this Court, in the case of *Fox v. The State of Ohio*, have taken care to point out, that the same act might, as to its character and tendencies, and the consequences it involved, constitute an offense against both the State and Federal governments, and might draw to its commission the penalties denounced by either, as appropriate to its character in reference to each. We think this distinction sound, as we hold to be the entire doctrines laid down in the case above mentioned, and regard them as being in no wise in conflict with the conclusions adopted in the present case: *U. S. v. Marigold* (1850), 9 How. (50 U. S.) 560, 569.

[And the Court proceeded to instruct the Circuit Court of the Northern District of New York, that the United States could punish for bringing counterfeit coins into the country and fraudulently circulating them. The Fugitive Slave law, however, brought the doctrine again into Court, where it was affirmed by nearly the same judges, WOODBURY having succeeded to CURTIS: *Moore v. Illinois* (1852), 14 How. (55 U. S.) 13, McLEAN dissenting on the sole ground of double punishment.

[In *Coleman v. Tennessee* (1878), 97 U. S. 509, the principle objected to was invoked in behalf of the State, to try, convict, and punish a murderer, who had already been tried and con-

victed for the same murder, by a court martial. The crime had been committed March 7, 1865, by a soldier, who thereby became punishable under the act of Congress of March 3, 1863, 12 Stat. at Large 736. For some reason, the sentence of the court martial had not been executed, and the criminal was convicted in the State Court in 1874. The Supreme Court of the United States held that the criminal was still within the power of the court martial and directed his delivery to the military authorities to be dealt with as required by law. This was upon the express ground that the doctrine did not apply, because the criminal was a soldier serving in a State, whose regular government was, at the time, superseded (p. 519). Justice CLIFFORD dissented, among others, for the express reason that the punishment in one sovereignty is no bar to punishment in the other (pp. 537-9); and he repeated his dissent in *Tennessee v. Davis* (1879), 100 U. S. 257, 277, where the Court denied to the State Court the right to try an officer of the United States for an homicide committed in the discharge of his duty. This has very recently been affirmed in Neagle's case, and was designed and operates only to shield Federal officers in the performance of their duty: See annotation to *Matter of David Neagle*, 28 AMERICAN LAW REGISTER 624. If Congress commands a State official, over whom they can have no control, the command is void: *Comm. of Ky. v. Dennison* (1860), 24 How. (65 U. S.) 66, but simply on the ground of want of power, not of clashing authority.

The people of the United States, resident within any State, are subject to two governments: one State, and the other National; but there need be no conflict between the two. The powers which one possesses the other does not. They are established for different purposes, and have separate jurisdictions. Together, they make one whole, and furnish the people of the United States with a complete government, ample for the protection of all their rights at home and abroad. True, it may sometimes happen that a person is amenable to both jurisdictions for one and the same act. * * * This does not, however, necessarily imply that two governments possess powers in common, or bring them into conflict with each other. It is, the natural consequence of a citizenship which owes allegiance to two sovereignties, and claims protection from both. The citizen cannot complain, because he has voluntarily submitted himself to such a form of government. He owes allegiance to the two departments, so to speak, and within their respective spheres must pay the penalties which each exacts for disobedience to its laws. In return, he can de-

mand protection from each within its own jurisdiction : WAITE, C. J., *U. S. v. Cruikshank* (1875), 92 U. S. 543, 550.

[This last case was an indictment for conspiracy, under the Enforcement Act of 1870 (16 Stat. at Large 140). The indictment was held insufficient because not stating sufficient particulars to establish that the unlawful combination was to prevent the enjoyment of a right secured by the Constitution, all rights not being secured thereby.

The doctrine that the State and the National Government are co-ordinate and altogether equal, is only partially true. Whilst the States are sovereign as to all matters which have not been granted to the jurisdiction and control of the United States, the Federal Constitution and the constitutional laws thereunder, are the supreme law of the land, and when they conflict with the laws of the States, they are of paramount authority and obligation.

This is the fundamental principle on which the authority of the Constitution is based ; and unless it be conceded in practice, as well as theory, the fabric of our institutions, as it was contemplated by its founders, cannot stand : BRADLEY, J., *Ex parte Siebold* (1879), 100 U. S. 371, 399.

[At the same time, the care exercised in all such cases in Federal Courts is not merely technical, and does not alone spring from the principles of interpretation of Federal criminal statutes ; but rather because—

It goes without saying, in our dual system of government, that the Federal government cannot take charge of a mere State election, or an election merely for State officers, and no matter what wrongs may be perpetrated in such election, they are beyond the cognizance of the Federal courts. The States, and the States alone, can punish offenses which are merely offenses against the State laws : BREWER, J., in *U. S. v. Morrissey*, (1887) U. S. Circ. Ct., E. Dist. Mo., 32 Fed. Rep. 147, 150.

X.

[The doctrine that Congress could enforce State election laws with the same effect as statutes of the United States, was declared to be constitutional in the cases of *Siebold* and *Clarke*, decided by the Supreme Court of the United States in October Term, 1879, and reported in 100 U. S. 371, 399. In each case, the opinion was delivered by Justice BRADLEY, with the concurrence of Chief Justice WAITE, and Justices MIL-

LER, STRONG, HUNT, SWAYNE and HARLAN. Justices FIELD and CLIFFORD dissented.

[An interesting application of this principle appears in the summary of the evidence given in the charge of the District Judge JACKSON, in *U. S. v. Carpenter*, U. S. Cir. Ct., Dist. Tenn., December 3, 1889, 41 Fed. Repr. 330: the returns showed 43 Republican ballots, while the evidence established that 109 Republican voters had deposited their ballots. Still more interesting is *U. S. v. Badinelli*, U. S. Circ. Ct., W. Dist. Tenn., December 20, 1888, 37 Fed. Repr. 138, where the election officers were indicted for excluding an elector from witnessing the count as allowed by the State Statutes, but escaped by proving that the manner of making the count was not legal under the State Statute, and hence no violation of the Federal law.

[The doctrine was amplified in 1888, (*In re Coy*, 127 U. S. 731, 753) so as to include the enforcement of State election laws by the United States Courts, not only for violation of those laws in respect to the ballots cast for Representatives in Congress, but also to those for State officers, so to prevent any tampering with any ballots at any election where Representatives in Congress are voted for. The decision was by Justice MILLER, with the concurrence of Justices BRADLEY, HARLAN, MATTHEWS, GRAY, BLATCHFORD and LAMAR; Justice FIELD dissented, and Chief Justice WAITE had died before the entry of the final judgment.

[The application of this principle resulted in a conviction for entering upon the book of registration of voters (under the Missouri Statute of 1883, Laws, p. 38), the names of persons who did not apply for registration or take any oath, such as the law requires: *U. S. v. Molloy*, April 20, 1887, U. S. Circ. Ct., E. Dist. Mo., 31 Fed. Repr. 19; *U. S. v. O'Connor*, June 3, 1887, Id. 449.

[In the Clarke case, Justices FIELD and CLIFFORD dissented on the ground—

First, that it is not competent for Congress to punish a State officer for the manner in which he discharges duties imposed upon him by the laws of the State, or to subject him in the performance of such duties, to the supervision and control of others, and punish him for resisting their interference; and,—

Second, that it is not competent for Congress to make the exercise of its punitive power dependent upon the legislation of the States.

Clarke had been convicted in the United States Circuit Court for the Southern District of Ohio, under Section 5515 of the Revised Statutes of the United States (*ante*, page 357) for a violation as an officer of the election, of the law of the State of Ohio, regulating an election at which a Representative in Congress was voted for, in not conveying the ballot box, to the county clerk, after it had been sealed up and delivered to him for that purpose, and for allowing it to be broken open.

[Siebold and others were judges of an election at which Representatives in Congress were voted for in the City of Baltimore, on the fifth of November, 1878, and they were convicted in the United States Circuit Court for the District of Maryland, under the same Section 5515 and also Section 5522 of the Revised Statutes of the United States, for stuffing the ballot boxes and preventing the United States Supervisors from performing their duties. The general propositions of the counsel for the prisoners were all denied, though not going so far as the two propositions of the dissenting justices; they were—

1. That the power to make regulations as to the times, places and manner of holding elections for Representatives in Congress, granted to Congress by the Constitution, is an exclusive power when exercised by Congress.

2. That this power, when so exercised, being exclusive of all interference therein by the States, must be so exercised as not to interfere with, or come in collision with, regulations presented in that behalf by the States, unless it provides for the complete control over the whole subject over which it is exercised.

3. That, when put in operation by Congress, it must take the place of all State regulations of the subject regulated, which subject must be entirely and completely controlled and provided for by Congress.

To this the Court, speaking by Justice BRADLEY, said—

We are unable to see why it necessarily follows that, if Congress makes any regulations on the subject, it must assume exclusive control of the whole subject. The Constitution does not say so: (100 U. S. 383.)

Coy was convicted in the United States Circuit Court for the District of Indiana, of conspiring to interfere with the officers of an election at which Representatives in Congress

were voted for; that the conspirators did by unlawful means, induce the officers to violate and refuse to comply with their duty in regard to the custody and safe keeping of the election returns; and that they persuaded and induced these officers, or attempted so to do, to omit their duty in regard thereto. The indictment was attacked by the defense because it contained no averment that the intent and purpose of the prisoner's conduct was to affect in any manner the election of a member of Congress, or to influence the returns relating to that office. It was argued that since there were many State and local officers also voted for at the same election, and in those precincts, and as it was consistent with the indictment that the actions of the conspirators were directed only to the election of those persons, and not to that for federal office,—of a Congressional Representative—the indictment was for that reason insufficient.

It was held, that an indictment in the courts of the United States, for conspiracy to induce these inspectors to omit their legal duty, so that the papers specified might come to the hands of persons who changed and falsified the returns, it was not necessary to aver or to prove the intention of the wrongdoers or conspirators to affect or change the returns as to the election of the Congressman who was voted for at the same time, and the returns of such votes in the same poll-books, tally sheets and certificates, with those of the State officers. The general principle was declared, that Congress has full power to protect these books and other documents from danger of falsification, even though the conspirators had no intention of tampering with the returns of the poll-books and certificates of the ballots for the member of Congress, but on the contrary, had in view the falsifying the returns of the State officers only.

The defense argued that since the evil intent was not shown to have been specifically aimed at the returns of the vote for Congressman, the statutes of the United States could have no force so far as the infliction of any penalty is concerned; that Congress had no power to provide for any punishment where no intent affecting the Congressional election was averred. This the Court denied: saying—

It would be a very singular principle to establish, that, where a man was charged with a homicide, caused by maliciously shooting into a crowd with the purpose of killing some person against whom he bore malice, but with no intent to injure or kill the individual who was actually struck by the shot, he should be held excused because he did not intend to kill that particular person, and had no malice against him: *MILLER, J.*, 127 U. S. 753.

[In this *Coy* case, Justice FIELD dissented from the extension of the general principle to the entire election. After alluding to the fact mentioned in *Siebold's* case (100 U. S. 393) by Justice BRADLEY, that convenience has induced the States to elect county and State officers at the same time as Representatives in Congress, Justice FIELD proceeded thus in his dissent—

According to the present decision, a conspiracy to persuade the officers of election to omit any duty imposed upon them under the laws of the State, though designed merely to affect the election of an inferior magistrate of a village, is an offence against the United States, punishable in the Federal Courts. Thus, obedience to the laws of the State, in matters of even local offices, if a member of Congress is voted for at the same election, may be enforced by the courts of the United States, instead of by the proper tribunals of the State whose laws have been violated. I am not able to assent to a doctrine which leads to this result, and gives the Federal courts power to intermeddle with the action of State officials in an election for local offices, whenever a member of Congress may have been voted for, at the same time. I agree to what is said by the Court, as to the temptations existing in a republican government, where political power is reposed in representatives of the entire body of the people, chosen at short intervals by popular elections, to control those elections by violence and corruption. But I do not perceive in that fact any reason why the punishment of fraud, committed or designed, at State elections, for State officers, should be transferred to the Federal courts: (127 U. S. 763.)

XI.

When a person is offering to vote, there is no law, State or National, authorizing his arrest, for any cause relating to his right of suffrage. But if he votes fraudulently, or falsely swears when put upon oath, he may be arrested afterwards at another time and place, and if found guilty, may be punished. At the polls, claiming and offering to vote, his right to be there for the purpose of voting is sacred, and his person inviolable: *U. S. v. Small* (1889), U. S. Circ. Ct., E. Dist. Va., 38 Fed. Repr. 103.

[This was an indictment of the judge of an election for unlawfully preventing a qualified voter from exercising his right of suffrage for Representative in Congress. The charge of the District Judge (HUGHES) is an interesting exposition of the right of the voter to approach the polls "free from all fear for his liberty and safety."

XII.

It is doubtful whether the rule, that penal statutes are to be construed strictly, has any application to the State and Federal laws regulating elections, as they merely regulate the conduct of general elections in the States and define the duties of the officers of elections. If these statutes, relating to the election of Representatives in Congress, taken as a whole, should be interpreted as penal, and strictly (and not remedial and to be liberally construed, in order to suppress the frauds and public wrongs against the ballot box), still the inquiry remains as to the intent with which the legislative department enacted these laws. The kindred rule must not be disregarded, that the intention of the lawmaker as gathered from the words employed, must govern the construction of all statutes: *In re Coy* (1887), U. S. Circ. Ct., Dist. Indiana, 31 Fed. Repr. 794; *Taylor v. U. S.* (1845), 3 How. (44 U. S.) 310; *U. S. v. Hartwell* (1868), 6 Wall. (73 U. S.) 385; that penal laws must not be construed so strictly as to defeat the obvious intention of the legislature, and the words of the statute narrowed to the exclusion of cases which these words in the ordinary acceptation or in that sense in which the legislature had obviously used them, would comprehend: *U. S. v. Wiltberger* (1820), 5 Wheat. (18 U. S.) 76, 95; that the evident intention of the legislature ought not to be defeated by a forced and overstrict construction: *U. S. v. Morris* (1840), 14 Pet. (39 U. S.) 464; *Amer. Fur. Co. v. U. S.* (1829), 2 Pet. (27 U. S.) 358, 367.

[In this connection, reference should be made to section 5520 and its exposition (*supra*, page 363), where conspiracy to prevent voting is the subject matter.

[Hence, Justice BREWER construed the word "so" out of the concluding clause of section 5514: *supra*, page 353; and Judges

DILLON and CALDWELL construed "officer of election," not to include the Governor of a State: (*supra*, page 360.)

XIII.

[There are some rules which may be formulated from the special dangers to the ballot, as shown in the following paragraphs.

[In construing those sections of the Revised Statutes which have their origin in Act of Congress whose language has been varied in the revision, care should be taken to observe the principle of interpretation applied in the Munford cases (*supra*, page 361), where this variation in language was observed in passing upon the constitutionality of sections 2005, 2006 and 5506 of the Revised Statutes.

[In the same direction as the thought expressed by Judge WOODRUFF (*ante*, page 342), but more generally, upon the Eighteenth clause of Section 8 of the Constitution, the language of Justice MILLER may be observed :

That a government whose essential character is republican, whose executive head and legislative body are both elective, whose most numerous and powerful branch of the legislature is elected by the people directly, has no power, by appropriate laws, to secure this election from the influence of violence, of corruption and of fraud, is a proposition so startling as to arrest attention and demand the greatest consideration.

If this government is anything more than a mere aggregation of delegated agents of other States and governments, each of which is superior to the general government, it must have the power to protect the elections on which its existence depends, from violence and corruption.

If it has not this power, it is left helpless before the two great natural and historical enemies of all republics,—open violence and insidious corruption.

The proposition that it has no such power, is supported by the old argument, often heard, often repeated, and in this Court, never assented to, that when a question of the power of Congress arises, the advocate of the power must be able to place his finger on the words which expressly grant it. The brief of counsel before us, though directed to the authority of that body to pass criminal laws, uses the same language. Because there is no express power to provide for preventing violence exercised on the voter as a means of controlling his vote, no such law can be enacted. It destroys, at one blow, in construing the Constitution of the United States, the doctrine universally applied to all instruments of writing, that what is implied is as much a part of the instrument as what is expressed.

This principle, in its application to the Constitution of the United States, more than to almost any other writing, is a necessity, by reason of

the inherent inability to put into words all derivative powers—a difficulty which the instrument itself recognizes by conferring on Congress the authority to pass all laws necessary and proper to carry into execution the powers expressly granted, and all other powers vested in the government, or any branch of it, by the Constitution ; Article I, sec. 8, clause 18 : *Ex parte Yarbrough* (1883), 110 U. S. 657, 658.

It was held in this case that Congress can by law protect the act of voting, the place where it is done, and the man who votes, from personal violence or intimidation, and the Congressional election itself from corruption and fraud. That it is the duty of the government to see that the votes by which the members of Congress and its President are elected, shall be the free vote of the electors, and the officers thus chosen the free uncorrupted choice of those who have the right to take part in that choice.

[While Congress has this power to enact appropriate legislation, the Court will not sustain that which amounts to a net large enough to catch all possible offenders by deciding who are rightfully detained and who are to be set at large ; otherwise Congress would encroach upon the powers reserved to the people and the States : *U. S. v. Reese* (1876), 92 U. S. 214. This case was decided by a divided Court, Chief Justice WAITE writing the opinion with the concurrence of Justices SWAYNE, MILLER, DAVIS, FIELD, STRONG and BRADLEY. Justice HUNT dissented on the ground that the statute (of May 31, 1870, 16 Stat. at Large 140) should be construed according to the plain intent of Congress, and not so extensively as to include that which Congress could not meddle with ; that is, a general violation of the rights of an elector at a State election, which was the case in hand, no candidate for Congress being voted for. Justice CLIFFORD, agreed with the judgment but upon totally different grounds, chiefly technical ; Justice MILLER distinguished this judgment of the Court in the *Yarbrough* case : (*Supra*, pages 346, 348.) From this principle of interpretation, Justice FIELD also dissented in the Chinese case of *Baldwin v. Franks* (1887), 120 U. S. 678. Justice MILLER repeated the principle in the Trade Mark Cases of *U. S. v. Steffens, et al.* (1879), 100 U. S. 82, only to practically recede, so far as laws relating to Congressional elections, in the tax case (*supra*, page 348). This principle is, therefore, not likely

to be applicable to any statute relating to Federal elections, which has been at all carefully drafted.

XIV.

The contest for a seat in the House of Representatives is a proceeding unknown to State legislation and the State judiciaries; and violations of the law of Congress regulating it are offenses against the United States, and not against the State. Of such contests, the Federal Courts have exclusive jurisdiction: *Ex parte Dock Bridges* (1875), U. S. Circ. Ct., N. Dist. Ga., 2 Wood, 428. So, when an accused is charged before a State Court with perjury in having testified falsely before a notary public in a Congressional election case under the Revised Statutes, Title 2, Chapter 8, regulating the taking of testimony, he must be discharged, because such an offense is cognizable only to the Federal Courts under Section 5392, providing for the punishment of perjury in any case in which the laws of the United States authorize an oath to be administered, and the second section of the Judiciary Act of August 13th, 1888, 25 Stat. at Large 434, giving the United States Courts exclusive cognizance of all crimes cognizable under the authority of the United States. A notary public is a State officer, having power to administer any oath required by State law, and no other. He has no power to administer oaths required by Congress, unless he is expressly authorized to do so by Act of Congress, in doing which he acts as an officer of the United States, and not as an officer of the State; perjury committed before any officer in a contested Congressional election case is amenable to punishment under the United States law: *In re Loney* (1889), U. S. Circ. Ct., E. Dist. Va., 38 Fed. Repr. 101. The United States Supreme Court affirmed this judgment, as the testimony in a congressional contested election case is given in obedience to the laws of the United States and not of the State, and the accused should have been tried before the Federal Court, and not before the State Court.

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